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IN THE SUPREME COURT OF FLORIDA

HONORABLE GERALDINE F. THOMPSON,
in her Official Capacity as a
Representative for District 44
in the Florida House of
Representatives, and as an
Individual,

CASE NO.

Petitioner,

vs.

HONORABLE RON DESANTIS, in his
Official Capacity of Governor
of Florida, and DANIEL E. NORDBY,
in his Official Capacity as Chair
of the Florida Supreme Court
Nominating Commission,

Respondents.

**EMERGENCY PETITION FOR WRIT OF QUO WARRANTO
AND WRIT OF MANDAMUS**

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NATURE OF RELIEF SOUGHT

The Florida Supreme Court Judicial Nominating Commission ("the JNC") exceeded the limits of its authority by certifying a list of nominees to Governor DeSantis that included a nominee who does not meet the constitutional requirements to hold the office of Supreme Court Justice. On the date the JNC certified Circuit Judge Renatha Francis¹ as a nominee, she had not been a member of The Florida Bar for the preceding ten years. Based on that fact, the plain and unambiguous language of the Florida Constitution and the Supreme Court Judicial Nominating Commission Rules explicitly precluded the JNC from certifying Judge Francis as a nominee. This Court should issue a writ of quo warranto reaching that conclusion and a writ of mandamus compelling the JNC to immediately provide Governor DeSantis with a new list of nominees that are constitutionally eligible to hold the office.

The Petitioner also seeks a writ of quo warranto establishing that Governor DeSantis exceeded the limits of his authority by

¹ The Petitioner's challenge to the nomination and appointment of Judge Francis is based solely on the requirements of the Florida Constitution. The Petitioner's challenge in no way questions whether Judge Francis has the abilities or qualifications to be considered for appointment as a justice on the Florida Supreme Court when she meets all the requirements of the Florida Constitution for that position.

appointing Circuit Judge Renatha Francis to the Florida Supreme Court. On the date of the appointment, Judge Francis had not been a member of The Florida Bar for the preceding ten years. The plain and unambiguous language of the Florida Constitution requires that an individual satisfy that requirement prior to being eligible for appointment.

If the Court concludes that Governor DeSantis has not yet formally "appointed" Judge Francis to the Florida Supreme Court, it should issue a writ of mandamus requiring the Governor to immediately appoint another individual who meets all the qualifications of the Florida Constitution from a new list of qualified candidates. Pursuant to the Florida Constitution, Governor DeSantis had a clear duty to appoint a fully qualified nominee no later than March 23, 2020. If Governor DeSantis has not yet made the required "appointment," he is in express violation of the Florida Constitution. Governor DeSantis should be required to immediately remedy that violation.

PRELIMINARY STATEMENT

Diversity on the Florida Supreme Court is an Important Goal Fully Supported by the Petitioner in this Case.

The Petitioner fully supports racial and gender diversity on the Florida Supreme Court. (Appendix A).² It is deeply disturbing that there are currently no African-American, Caribbean-American, or female members on the Supreme Court. The Petitioner believes that diversity is vital to the fair administration of justice, promotes a broader understanding of legal issues, and instills public confidence in the legal system.

The Petitioner notes that this Court has previously recognized that a Governor's interest in achieving diversity in the judiciary is a well-intentioned goal. See *Pleus v. Crist*, 14 So.3d 941, 946 (Fla. 2009). The Legislature has also made diversity a priority with regards to membership of the JNC. In making appointments to the JNC, the Legislature has stated the following:

the Governor shall seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic

² Rep. Thompson: Nominee was the wrong choice for state Supreme Court, Orlando Sentinel, The Honorable Geraldine F. Thompson, February 14, 2020
<https://www.orlandosentinel.com/opinion/guest-commentary/os-op-geraldine-thompson-minority-judges-20200214-g3mustz5dncnjfcprx2jflwmu-story.html>

distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered. The Governor shall also consider the adequacy of representation of each county within the judicial circuit.

Fla. Stat. § 43.291.

Despite the widely-recognized interest in diversity on the judiciary, and the fact that there were six fully-qualified African American applicants for the vacancies, the JNC failed to certify a single qualified African-American or Caribbean-American to Governor DeSantis. The failure of the JNC to include a single constitutionally-qualified candidate is puzzling, given the wealth of experience and pure merit of many of the diverse and constitutionally-qualified candidates that applied, but who were somehow overlooked by the JNC.

As noted below, the JNC exceeded the scope of its legal authority by sending Governor DeSantis a list of nominees which included an individual who is not constitutionally qualified to hold the office of Supreme Court Justice.

STATEMENT OF CASE AND FACTS

On November 18, 2019, Robert Luck advised Governor Ron DeSantis that he was resigning from his position as a Justice on the Florida Supreme Court. (Appendix B). On November 22, 2019, Barbara Lagoa advised Governor Ron DeSantis that she was resigning

from her position as a Justice on the Florida Supreme Court. (Appendix C).

On November 25, 2019, Governor DeSantis requested that Daniel Norby, the Chair of the JNC, convene the commission for the purpose of selecting and submitting nominees to the Governor for appointment to the Florida Supreme Court to fill the vacancies caused by the resignations of Justice Luck and Justice Lagoa. Governor DeSantis requested that the JNC provide him with 12 nominees, the maximum permitted by law for two vacancies (Appendix D).³ On the same day, November 25, 2019, the JNC issued a press release indicating that the commission was accepting applications to fill the vacancies caused by the resignations of Justice Luck and Justice Lagoa. (Appendix E).

On December 24, 2019, the JNC issued a press release indicating that it had received 32 applications for the vacancies on the Florida Supreme Court. (Appendix F).⁴ Judge Francis was the only applicant who had not been a member of The Florida Bar for the preceding ten years. (Appendix G). Seven of the 32 applicants,

³ Article V, Section 11 of the Florida Constitution; Section VII, *Procedure for Final Voting*, Supreme Court Nominating Commission Rules.

⁴ Circuit Court Judge Kimberly Bonner's name was inadvertently left off the list of applicants included in the press release.

including Judge Francis, were African-American or Caribbean-American. The experience and qualification of the African-American and Caribbean-American individuals who applied for the vacancies included the following:⁵

Ms. Belinda Noah was a member of The Florida Bar for **36 years** when she applied to be a justice on the Florida Supreme Court. She obtained her J.D. from the Florida State University College of Law. After becoming a member of The Florida Bar, she became a law editor for the Commerce Clearing House. She served as Assistant General Counsel with the Department of Business Regulations and Department of Banking and Finance from 1986-1989. Ms. Noah operated her own private practice from 1983-1985 and between 2006-2014. From 1983-2003, she was the host and producer of a television show called "Legal Notes". Ms. Noah has been a candidate for the United States House of Representatives and the United States Senate.

Judge Daryl Trawick was a member of The Florida Bar for **35 years** when he applied to be a justice on the Florida Supreme Court. He currently serves as a circuit judge in the 11th Circuit of Florida, since being appointed by Governor Jeb Bush in 2000. Prior to that, Judge Trawick served as county judge in Miami-Dade County after he was appointed by Governor Lawton Chiles in 1997.

⁵ Information obtained from the applications of the candidates.

Judge Trawick earned his J.D. from Howard University School of Law, where he served as Senior Associate Editor of the school's law review and won national awards as a member of the school's moot court team. Additionally, Judge Trawick earned numerous honors and awards during his time in the U.S. Air Force, where he ultimately achieved the rank of Lieutenant Colonel. Judge Trawick also served the Air Force as an Assistant Staff Judge Advocate and Military Judge.

Judge Trawick was an Assistant United States Attorney for the Southern District of Florida from 1990-1997. From 1994-1997, he served as the Chief of the Special Prosecutions Section of the U.S. Attorney's Office. Since 2004, Judge Trawick has been an adjunct professor of law at St. Thomas University School of Law and Miami-Dade College.

Judge Elijah Smiley was a member of The Florida Bar for **34 years** when he applied to be a justice on the Florida Supreme Court. He obtained his J.D. from the Florida State University College of Law. Judge Smiley was an intern for the Florida Legislature's Criminal Justice Committee and a Staff Attorney for Legal Services of Northwest Florida. He served as an Assistant Public Defender from 1989-1992, before entering private practice.

Throughout his time in private practice, Judge Smiley taught at a number of universities. Judge Smiley became a county court judge in Bay County in 1995 and served in that position until 2006, when he was elected as a circuit court judge. Judge Smiley served as the Chief Judge of the 14th Judicial Circuit from 2015-2019.

Judge William Thomas was a member of The Florida Bar for **24 years** when he applied to be a justice on the Florida Supreme Court. He obtained his J.D. from the Temple University School of Law. Judge Thomas was an Assistant State Public Defender from 1994-1997 and an Assistant Federal Public Defender from 1997-2004. Judge Thomas has been a circuit judge for the 14th Judicial Circuit since being elected to that position in 2004. In 2012 and 2013, President Barack Obama nominated Judge Thomas to be a federal district court judge for the Southern District of Florida. Judge Thomas spent time at both Florida Memorial University and the University of Miami School of Law as an adjunct professor.

Judge Fabienne Fahnstock was a member of The Florida Bar for **21 years** when she applied to be a justice on the Florida Supreme Court. She obtained her J.D. from the University of Florida College of Law and also has an MBA from Nova Southeastern University. Judge Fahnstock was a law clerk at the Fourth District Court of Appeal from 1998-2000. She was an associate at Ruden McClosky, and an

associate and shareholder at Gunster, Yoakley, & Stewart from 2002-2017. She has served as a circuit judge in the 17th Judicial Circuit since being appointed in 2017.

Judge Cymonie Rowe was a member of The Florida Bar for **21 years** when she applied to be a justice on the Florida Supreme Court. She received her J.D. from Nova Southeastern University. She was a Lead Trial Associate with Kirwan & Spellacy from 1998-2002 and worked as a Trial Attorney for Liberty Mutual from 2006-2016. She has been a circuit judge in the 15th Judicial Circuit since she was appointed in 2016.

Each constitutionally-qualified African-American and Caribbean-American candidate possessed at least two decades of experience in the legal field before applying to become a Florida Supreme Court Justice. Many of these candidates exude excellence and have made meaningful contributions to the profession over their long careers.

Judge Renatha Francis was a member of the Florida Bar for approximately 9 years when she applied to be a Justice on the Florida Supreme Court. She is a graduate of Florida Coastal School of Law. Judge Francis served as a law clerk to Judge Peter Webster of the First District Court of Appeal from 2010-2011. She was a Staff Attorney at the First District Court of Appeal from 2011-

2012. She worked as a Career Staff Attorney to Judge Scott Makar of the First District Court of Appeal from 2012-2017. In 2017, she was an associate at Shutts & Bowen, LLP, before being appointed as a county court judge in Miami-Dade County by Governor Rick Scott. Governor Scott appointed her as a circuit judge in the Eleventh Judicial Circuit Court in 2018. Thereafter, Governor Ron DeSantis appointed her as a circuit court judge in the Fifteenth Judicial Circuit Court in 2019.

On January 23, 2020, the JNC nominated 9 applicants for consideration by Governor DeSantis for appointment to the Florida Supreme Court. (Appendix H). The JNC did not comply with Governor DeSantis' request to certify 12 nominees for the 2 vacancies. The 9 applicants nominated for potential appointment were the following:

John Couriel

Renatha Francis

Jonathan Gerber

Jamie Grosshans

Norma Lindsey

Timothy Osterhaus

Eliot Pedrosa

Lori Rowe

Meredith Sasso

(Appendix H).

Of the 9 nominees, only Renatha Francis is Caribbean-American. Five of the 9 nominees are women. Judge Francis was the only nominee who has not been a member of The Florida Bar for the past 10 years. Judge Francis was admitted to The Florida Bar on September 24, 2010. Thus, she will have been a member of the Florida Bar for 10 years on September 24, 2020. (Appendix G).

On May 26, 2020, Governor DeSantis appointed John Couriel to the Florida Supreme Court to fill the vacancy left by Justice Lagoa. (Appendix I). On May 26, Governor DeSantis appointed Judge Francis to the Florida Supreme Court to fill the vacancy left by Justice Luck. (Appendix J, K). In his press release announcing the appointment, Governor DeSantis noted that Judge Francis would be the first Jamaican-American to serve on the Florida Supreme Court. (Appendix K). As of May 31, 2020, both John Couriel and Renatha Francis are listed and pictured as Current Justices of the Florida Supreme Court. (Appendix L).⁶

⁶ Florida Supreme Court, Current Justices - <https://www.floridasupremecourt.org/Justices> (last visited July 11, 2020).

JURISDICTION

This Court has jurisdiction to issue writs of quo warranto and mandamus pursuant to Article V, Section 3(b)(8) of the Florida Constitution, and Rule 9.030(a)(3), Florida Rules of Appellate Procedure. "Quo warranto is used to determine whether a state officer or agency has improperly exercised a power or right derived from the State." *League of Women Voters v. Scott*, 232 So.3d 264, 265 (Fla. 2017).

The Governor of Florida is a state officer subject to quo warranto jurisdiction. See e.g. *League of Women Voters v. Scott*, 257 So.3d 900 (Fla. 2018). Pursuant to Article V, Section 11(d), the JNC is a constitutional body. Like the Governor, the JNC exercises functions of the executive branch of government. See *In re Advisory Opinion to Governor*, 276 So.2d 25, 29-30 (Fla. 1973). As a result, the JNC is also subject to quo warranto jurisdiction.

As outlined below, both the Governor and the JNC have clear and indisputable legal duties. As a result, they are also subject to mandamus jurisdiction. See *Pleus*, 14 So.3d at 945.

This Court's authority to issue writs of quo warranto and mandamus is discretionary and concurrent with other courts in Florida. However, the specific considerations present in this case

warrant an immediate review and decision by this Court. See *Fla. House of Reps v. Crist*, 999 So.2d 601, 608 (Fla. 2008).

As of this date, there has been a vacancy on the Florida Supreme Court for more than seven months. This Court has repeatedly held as follows:

[V]acancies in judicial office are to be avoided whenever possible. We are confident that the framers of Article V of the Florida Constitution intended that the nominating and appointment process would be conducted in a way as to avoid or at least minimize the time that vacancies exist.

Pleus, 14 So.3d at 946 (internal quotations omitted) (citing *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla. 1992)). The continued existence of a vacancy on the Florida Supreme Court since November 2019 adversely affects the function of government and requires that this Court make an immediate determination on the issues in this petition. See *Chiles v. Phelps*, 714 So.2d 453, 457 (Fla. 1998).

STANDING

The Petitioner is a Florida citizen and taxpayer. She is also an elected Representative for District 44 in the Florida House of Representatives. As a result, she has a legal right to seek quo warranto and mandamus relief from this Court. See *Whiley v. Scott*, 79 So.3d 702, 706 n.4 (Fla. 2011); *Pleus*, 14 So.3d at 945.

ARGUMENT

"The interpretation of a constitutional provisions involves a question of law. In interpreting constitutional language, this Court follows principles parallel to those of statutory interpretation. First and foremost, this Court must examine the actual language used in the Constitution. If that language is clear, unambiguous, and addresses the matter in issue, then our task is at an end." *Advisory Opinion to Governor re Implementation of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) (internal citations and quotations omitted).

Therefore, this Court adheres to the "supremacy-of-text principle:" "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Id.* (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)).

I. THE SUPREME COURT JUDICIAL NOMINATING COMMISSION EXCEEDED ITS AUTHORITY BY CERTIFYING JUDGE RENATHA FRANCIS AS A NOMINEE FOR THE VACANCIES ON THE FLORIDA SUPREME COURT.

The JNC exceeded the limits of its legal authority by certifying a list of nominees to Governor DeSantis that included a nominee that is not constitutionally eligible to hold the position of Florida Supreme Court Justice. The action of the JNC

violated both the Florida Constitution and the rules governing the Supreme Court Nominating Commission.

Article V, Section 11(d) of the Florida Constitution created the Supreme Court Judicial Nomination Commission by stating the following:

There shall be a separate nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

Art. V. Section 11(d), FLA. CONST.

The Florida Legislature established the composition of the JNCs and the terms of membership in Fla. Stat. § 43.291. In accordance with Article V, Section 11(d), the Florida Supreme Court JNC has established rules of procedure. In pertinent part, the relevant rules state as follows:

Within a reasonable time after the deadline for applications, the Commission shall meet to consider the applicants and to select applicants for further investigation and consideration. No person shall be selected for

further investigation and consideration who does not meet all legal requirements for the office to be filled.

Section II, *Initial Screening*, Supreme Court Nominating Commission Rules (emphasis added).

No nominee shall be recommended to the governor for appointment unless the commission finds that the nominee meets all constitutional and statutory requirements and is fit for appointment to the particular judicial office after full and careful consideration . . .

Section V, *Standards and Qualifications; Criteria*, Supreme Court Nominating Commission Rules (emphasis added).

Upon the conclusion of its investigations and interviews, the Commission shall meet to select by majority vote qualified nominees from those persons having applied for such vacancy. The number of qualified nominees selected by the Commission shall be consistent with constitutional and statutory criteria for the applicable office . . .

Section VI, *Final Selection of Nominees*, Supreme Court Nominating Commission Rules (emphasis added).

Pursuant to Article V, Section 8 of the Florida Constitution, “[n]o person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida.” It is undisputed that Judge Francis had not been a member of The Florida Bar for the 10 preceding years on January 23, 2020,

the day the JNC included her on the list of certified nominees provided to Governor DeSantis. She will not meet that requirement until September 24, 2020. (Appendix H).

In light of that fact, it is impossible to conclude that the JNC complied with Section II, V, and VI of its own rules, because Judge Francis did not meet all the constitutional requirements to be a justice on the Florida Supreme Court, and thus, was not "qualified" for that position. There is nothing in the Florida Constitution or the JNC Rules which provides the JNC with authority to nominate an individual for potential appointment to the Supreme Court where that individual may become eligible for that position on some future date.

Governor DeSantis was constitutionally required to make an appointment within 60 days of the JNC certifying its list of nominees. Article V, Section 11(c). Therefore, the JNC clearly lacked authority to certify an individual for consideration where that individual could not meet the constitutional requirements to be a justice on the Florida Supreme Court until approximately 6 months after that mandatory 60-day time period expired.

Governor DeSantis had until March 23, 2020, to make an appointment to the Florida Supreme Court. As previously asserted, Judge Francis would not have been a member of The Florida Bar for

10 years until September 24, 2020, more than 6 months later. Under these circumstances, it is readily apparent that the JNC exceeded its legal authority by including her on the list of certified nominees it provided to Governor DeSantis.

Accordingly, this Court should issue a writ of quo warranto specifically concluding that the JNC exceeded its legal authority by including Judge Francis on the list of certified nominees. It seems readily apparent that the JNC should have been aware that Judge Francis was not eligible to be included on the list of certified nominees. However, it is impossible to know whether the JNC would have certified additional or different nominees to Governor DeSantis had it reached that conclusion and excluded her.

Therefore, this Court should also issue a writ of mandamus compelling the JNC to immediately⁷ provide Governor DeSantis with a new list of nominees. The list should include 6 of the 31 individuals that previously applied and that were constitutionally eligible to hold the office as of January 23, 2020, the date the

⁷ The JNC has previously conducted the required investigation and interviews of the remaining 31 applicants for the vacancy involved in this case. Thus, there is no impediment to the JNC promptly certifying a new list of certified nominees to Governor DeSantis.

JNC was originally required to certify its list of nominees to Governor DeSantis.

The relevant date should be January 23, 2020. A later date would improperly permit the JNC to circumvent the strict time deadlines in Article V of the Florida Constitution.

Mandamus is appropriate because the JNC had a clear and indisputable legal duty to certify to the Governor a list of individuals which only included "qualified" nominees. See *Pleus*, 14 So.3d at 945. As of this date, the JNC has failed to do so.

When completing its list of certified nominees, the JNC should remain cognizant that it is legally permitted to submit a total of 6 names for consideration by Governor DeSantis. More importantly, in support of the interest of promoting diversity in the judicial branch publicly stated by Governor DeSantis, the Legislature, and this Court, the JNC should strongly consider including for consideration the 6 fully-qualified African-American candidates who applied for the vacancies in this case.

II. GOVERNOR DESANTIS EXCEEDED HIS AUTHORITY BY APPOINTING JUDGE RENATHA FRANCIS TO THE FLORIDA SUPREME COURT

A. This Court Should Issue a Writ of Quo Warranto

Here, the plain and unambiguous language of Article V establishes that Governor DeSantis lacked the authority to appoint Judge Francis on May 26, 2020. Therefore, this Court should issue

a writ of quo warranto establishing that Governor DeSantis exceeded the limits of his authority by appointing Circuit Judge Renatha Francis to the Florida Supreme Court.

First, pursuant to Article V, Section 3 of the Florida Constitution, "the supreme court shall consist of seven justices." Here, it is undisputed that there were two vacancies on the Florida Supreme Court for more than six months from November 22, 2019, through May 26, 2020.

Pursuant to Article V, Section 8 of the Florida Constitution, "[n]o person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida." Here, it is undisputed that Judge Francis had not been a member of The Florida Bar for the 10 preceding years on May 26, 2020, the day she was appointed by Governor DeSantis. She will not meet that requirement until September 24, 2020. (Appendix H).

Pursuant to Article V, Section 11(a), the Governor has the authority to fill vacancies on the Florida Supreme Court. Pursuant to Article V, Section 11(c) and (d), nominations for vacancies on the Florida Supreme Court must be made by the JNC within 60 days of the occurrence of a vacancy. Pursuant to Article V, Section

11(c), “[t]he governor shall make the appointment within sixty days after the nominations have been certified to the governor.”

Here, the JNC certified the names of the 9 nominees for the 2 vacancies on the Florida Supreme Court to Governor DeSantis on January 23, 2020. (Appendix G). Thus, pursuant to Article V, Section 11(c), Governor DeSantis had until March 23, 2020, to appoint two individuals to fill the vacancies on the Supreme Court.

Governor DeSantis did not comply with the mandatory 60-day requirement of Article V, Section 11(c). See *Pleus*, 14 So.3d 941, 945 (“The plain language of article V, Section 11(c), mandates that the Governor, upon receipt of the certified list of nominees from a judicial nominating commission, make an appointment from that list within sixty days to fill the judicial vacancy.”). Instead, Governor DeSantis appointed Judge Francis on May 26, 2020, more than 4 months after he received the certified list.

“Appoint” means “[t]o choose or designate (someone) for a position or job, esp. in government.” *APPOINT*, Black's Law Dictionary, Bryan A. Garner (11th ed. 2019).⁸ Governor DeSantis’

⁸ “This Court in construing constitutional language approved by the voters often looks to dictionary definitions of the terms because we recognize that, in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.” *Advisory Opinion to Governor re Implementation of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d at 1078.

letter to Judge Francis (Appendix J), and his press release announcing her appointment to the Florida Supreme Court (Appendix K) constituted her "appointment" for purposes of Article V of the Florida Constitution. It is readily apparent that both Governor DeSantis' letter on May 26, 2020, and his press release issued on May 26, 2020, indicated that he had chosen or designated Judge Francis to fill the vacancy created by Justice Luck and to be a justice on the Florida Supreme Court. Any other conclusion defies common sense and is contrary to the plain and unambiguous language of Article V of the Florida Constitution.

However, on May 26, 2020, it is beyond dispute that Judge Francis did not meet the eligibility requirements of Article V, Section 8 of the Florida Constitution to be a justice on the Florida Supreme Court. On that date, she had not been a member of The Florida Bar for the preceding ten years.

In light of that undisputed fact, Governor DeSantis lacked the legal authority to appoint Judge Francis to that position. Governor DeSantis has no authority to further delay the appointment of an individual to fill the vacancy created by Justice Luck because he is already well beyond the 60-day time limit that expired on March 23, 2020. Accordingly, this Court should issue a writ of quo warranto declaring that Governor DeSantis exceeded his

constitutional authority by appointing Judge Francis to the Florida Supreme Court on May 26, 2020.

In this case, the entire process for filing the vacancy in question was corrupted by the JNC including an ineligible nominee on the list of individuals it certified to the Governor. As a result, the only remedy that is fair to all 31 individuals who originally applied for the vacancies is to require the JNC to immediately certify a new list of nominees to Governor DeSantis. In the interest of diversifying the judiciary that has been publicly promoted by Governor DeSantis, the JNC should strongly consider including the six qualified African-Americans on the list it certifies to the governor. Governor DeSantis should be required to immediately appoint one of the individuals on the new list to the Florida Supreme Court.

B. In the Alternative, this Court Should Issue a Writ of Mandamus

The Petitioner acknowledges that there is some authority that suggests a governor's appointment is not finalized until he both announces the appointment and executes the commission of the appointed individual. This Court reached that conclusion in *State ex. rel. Lawson v. Page*, 250 So.2d 257 (Fla. 1971).

In *Page*, the Court held that "[w]here, as in this case, no election by the voters or approval by the State Senate are

required, a simple statement or letter of intent from the Governor saying he was appointing a person to office would not be final and valid unless and until a commission is executed by the Governor and attested by the Secretary of State. *Id.* at 258. However, this Court has also concluded, that the Governor cannot issue a commission to an individual that is not constitutionally qualified for the office in question. See *In re Advisory Opinion to the Governor*, 192 So.2d 757, 759 (Fla. 1966).

As previously asserted, Judge Francis is not constitutionally qualified to be a justice on the Florida Supreme Court until September 24, 2020. Therefore, even if *Page* applies, Governor DeSantis cannot issue a commission and finalize her appointment.

However, the Petitioner asserts that the decision in *Page* was wrongly decided because the Florida Constitution includes no language indicating that the issuance of a commission by the governor is necessary to finalize an "appointment." Based on the plain language of Article V, and the plain and ordinary meaning of "appointment," the letter and press release issued by Governor DeSantis on May 26, 2020, was sufficient to constitute Governor DeSantis' purported appointment of Judge Francis. This Court should recede from *Page* because it is clearly erroneous and contrary to the plain language of the Florida Constitution.

This Court recently explained its approach to stare decisis. This Court held that, “[i]n a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield.” *State v. Poole*, 45 Fla. L. Weekly S41, *15 (Fla. Jan. 23, 2020).

However, even if this Court chooses to adhere to *Page*, it should issue a writ of mandamus. Governor DeSantis was required to appoint a constitutionally qualified nominee no later than March 23, 2020. Since that deadline has long since passed, the writ of mandamus should instruct Governor DeSantis to promptly select a constitutionally-qualified nominee from the original list of 31 eligible applicants. Pursuant to *Page* and *Pleus, supra*, Governor DeSantis would then have completed his clear and indisputable duties under the Florida Constitution.

As previously asserted, the entire process for filling the vacancy at issue in this case was rendered invalid when the JNC included an ineligible nominee on the list of individuals it certified to the Governor. Under these circumstances, the only remedy that complies with the Florida Constitution, and which is

fair to the 31 individuals who originally applied for the vacancies, is to require the JNC to immediately certify a new list of nominees to Governor DeSantis. Governor DeSantis should be required to immediately appoint one of the individuals on the new list to the Florida Supreme Court.

C. **This Court Should Avoid Construing the Florida Constitution in a Manner Which Would Lead to an Absurd Result.**

A conclusion that Governor DeSantis had the authority to appoint Judge Francis on May 26, 2020, or that he can finalize her appointment by signing her commission on or after September 24, 2020, would lead to an absurd result. It would permit Governor DeSantis and future governors to allow vacancies in Florida's appellate courts to remain open for extremely lengthy periods of time. There would be nothing that would prevent a governor from appointing someone who has been a member of The Florida Bar for only 7 years and then waiting 3 years to sign that individual's commission when they finally met the eligibility requirements of Article V. This Court has previously held that the provisions of Article V were designed to avoid or at least minimize the time that vacancies exist. *Pleus*, 14 So.3d at 946.

"[A]n interpretation of a constitutional provision which will lead to an absurd result will not be adopted when the provision is

fairly subject to another construction which will accomplish the manifest intent and purpose of the people.” *Department of Environmental Protection v. Millender*, 666 So.2d 882, 886-887 (Fla. 1996); *Plante v. Smathers*, 372 So.2d 933, 936 (Fla. 1979) (internal quotations omitted).

“A constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by its context.” *Plante*, 372 So.2d at 936. In this case, a construction of Article V that permitted a governor to appoint a nominee prior to that individual obtaining the constitutionally required amount of experience or to unnecessarily delay an appointment until they have the requisite experience would nullify Article V, Sections 8 and 11 of the Florida Constitution, and the strict time deadlines included in those provisions.

CONCLUSION

For the aforementioned reasons, this Court should issue a writ of quo warranto, a writ of mandamus, or both. This Court should order the JNC to immediately provide Governor DeSantis with a new list of nominees that were constitutionally eligible to hold the office as of January 23, 2020. Additionally, it should order Governor DeSantis to immediately appoint one of those individuals

to the Florida Supreme Court so that the lengthy vacancy that has existed on the Court since November 2019 is filled as soon as possible.

Governor DeSantis' has touted his attempt to appoint Judge Francis to the Supreme Court as an effort to achieve diversity. However, both diversity and experience can and must be achieved while complying with the Florida Constitution. There is no legal impediment to the JNC and Governor DeSantis achieving diversity on the judiciary while also complying with the requirements of the Florida Constitution. Of the seven African-American and Caribbean-American candidates that applied, all but one not only met the constitutional floor for appointment, but also demonstrated professional excellence through their careers in the legal community.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Petition has been furnished by e-service to Joseph W. Jacquot, General Counsel, Executive Office of the Governor, joe.jacquot@eog.myflorida.com, counsel for Respondent Ron DeSantis, and to Respondent Daniel Nordby, in his capacity as Chair of Respondent Florida Supreme Court Judicial Nominating Commission, Shutts & Bowen, 215 South

Monroe Street, Suite 804, Tallahassee, Florida 32301,
dnordby@shutts.com on this 13th day of July, 2020.

/s/ William R. Ponall
WILLIAM R. PONALL
Florida Bar No. 421634

/s/ Lisabeth J. Fryer
LISABETH J. FRYER
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DESIGNATION OF EMAIL ADDRESSES

Attorney William R. Ponall hereby designates
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition is submitted in Courier
New 12-point font and thereby complies with the font requirements
of Fla. R. App. P. 9.210(a)(2).

/s/ William R. Ponall
WILLIAM R. PONALL
Florida Bar No. 421634

/s/ Lisabeth J. Fryer
LISABETH J. FRYER
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